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THE CONDUCT OF PROCEEDINGS FOR THE SELECTION OF OFFICERS FOR PROMOTION IN THE U.S. AIR FORCE

NOVEMBER 26, 1991

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JOINT STATEMENT OF SENATOR SAM NUNN, CHAIRMAN, SENATE ARMED SERVICES COMMITTEE AND SENATOR JOHN WARNER, RANKING MINORITY MEMBER CONCERNING THE CONDUCT OF PROCEEDINGS FOR THE SELECTION OF OFFICERS FOR PROMOTION IN THE U.S. AIR FORCE, NOVEMBER 26, 1991

The selection of officers for promotion in the armed forces through the grade of major general and rear admiral is governed by statutory procedures. The central feature of these procedures is the use of impartial boards of officers, known as selection boards, to recommend officers for promotion. The composition and conduct of these boards is carefully guided by laws and regulations designed to ensure the fairness and impartiality of board proceedings. The range of actions that may be taken by the senior leadership before, during, and after the board proceedings is likewise circumscribed to preclude improper interference with the integrity of the selection process.

The fair and impartial conduct of the selection process is a matter of great concern to the Committee. The integrity of the selection process is essential to the integrity of the officer corps. Adherence to established laws and regulations is necessary to ensure that the best qualified officers are selected for promotion, and that the officer corps has confidence in the integrity of the selection process.

During the Committee's review of certain Air Force nominations during the 101st Congress, the Committee received information which indicated the possibility of serious systemic deficiencies in the procedures used by the Air Force, to recommend officers for selection to general officer positions. The Committee brought these matters to the attention of the Department of Defense. The Deputy Secretary of Defense ordered an examination of officer selection procedures throughout the Department of Defense. The results of that review were provided to the Committee. The Committee also directed the Committee staff to review these matters. The results of these reviews are described in the attached staff analysis.

These reviews identified the following systemic deficiencies in the Air Force officer selection process:

(1) Failure to issue implementing regulations required by applicable statutes and Department of Defense Directives to ensure the fair operation of the selection board process.

(2) Use of a preselection process that improperly excluded ninety percent or more of the eligible officers from consideration by statutory selection boards.

(3) Improper communication to selection boards of "priority lists" prepared by senior officers.

(4) Improper communications between the Air Force leadership and selection board members.

In addition, these reviews identified deficiencies in specific cases that are described in the attached staff analysis.

As a result of the DoD review initiated by the Committee, the Air Force has taken corrective action by issuing a regulation governing general officer selection boards, eliminating the preselection process, eliminating the use of priority lists, and issuing regulatory restrictions on communications between the leadership and selection board members.

Section 504 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 establishes new statutory procedures for the conduct of selection boards. These procedures address the problems identified in the review of Air Force selection board practices. Section 504 requires prompt implementation by the Secretary of Defense. The Committee will conduct appropriate oversight hearings early in the Second Session of the One Hundred Second Congress to review the manner in which the legislation has been implemented. In addition, these hearings will examine the very important issue of accountability and responsibility for the deficiencies in the Air Force promotion selection process.

THE CONDUCT OF PROCEEDINGS FOR THE SELECTION OF OFFICERS FOR PROMOTION IN THE U.S. AIR FORCE

STAFF REPORT TO THE COMMITTEE ON ARMED SERVICES, U.S. SENATE, NOVEMBER 26, 1991

During 1990 and 1991, the Committee on Armed Services reviewed officer promotion selection processes in the U.S. Air Force. In July 1991, Senator Sam Nunn and Senator John Warner, Chairman and Ranking Minority Member, directed the staff to prepare a staff analysis of the results of the review. The staff presented the analysis to the Committee on November 19, 1991. The Committee determined that the analysis should be issued as a Committee document. The following is the staff report that was prepared at the direction of the Committee.

Part I of this report sets forth the statutory and regulatory background of the current promotion selection process. Part II describes the events resulting in the Committee's inquiries and a review by the Department of Defense. Part III analyzes the deficiencies in Air Force procedures disclosed as a result of the Committee's inquiries and the Department's review.

I. STATUTORY AND REGULATORY BACKGROUND

The promotion selection process

The promotion of military officers through the grade of major general and rear admiral relies on a merit-based system, the centerpiece of which is the selection board process. The sole exception involves officers nominated under the President's power under Article II of the Constitution to make nonstatutory nominations, an authority that is rarely invoked.

Under current law, 10 U.S.C. 612, each selection board must consist of at least five officers, all of whom must be serving in a grade higher than the officers under consideration by the board. To ensure that the selection process is not dominated by a small group of officers, the law provides that "[n]o officer may be a member of two successive selection boards * * * for the consideration of officers of the same competitive category and grade." 10 U.S.C. 612(b). To emphasize the solemnity of the board's responsibilities, a statute requires that each member "swear that he will perform his duties as as member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force." 10 U.S.C. 613.

To encourage candid discussions free from outside interference, the law prohibits disclosure of a board's deliberations "to any

person not a member of the board," subject only to very limited exceptions. 10 U.S.C. 618(f).

The board must submit a written report, signed by each member, certifying that the board has "carefully considered the record of each officer" under consideration, and that those recommended by the board "are best qualified for promotion." 10 U.S.C. 617.

Prior to submission of the board's report to the President, it is reviewed by the Secretary of the Military Department concerned, the Chairman of the Joint Chiefs of Staff, and the Secretary of Defense. These individuals are not authorized to interfere with the legitimate exercise of discretion by the selection board or to make any changes in the recommendations of the board. The Service Secretary may return the report to the board for further consideration only if there has been a violation of law, regulations, or guidelines. Nether the Service Secretary, nor any other official who reviews the board's report, may add a name to, or delete a name from, the list recommended by the board. Only the President may remove a name from a list recommended by the board. 10 U.S.C. 618.

1987 investigation into improper communications with selection boards

In 1987, the Armed Services Committee conducted an inquiry into irregularities associated with the 1987 Marine Corps major general promotion list. One of the key problems arising out of the 1987 inquiry involved verbal communications by the Secretary of the Navy and the Commandant of the Marine Corps to the President of the selection board. The verbal communications resulted in two additional names being added to the board's original eight selections.

The Committee's report of the Marine Corps major general board (S. Exec. Rept. No. 3, 100th Cong., 1st Sess. (1987)) commented specifically on the relationship between oral communications and fairness of the selection process:

> The Committee observes that if an officer's selection is influenced by actions or oral communications of senior officials occurring outside the authorized selection board process, then other officers under consideration, who must rely on the authorized board process, may be denied a fair and equitable opportunity to be selected.

The report outlined the proper procedure for communicating information to a selection board:

> Opinions, in writing, by a Service Secretary or a Service Chief, with respect to personnel under their authority, can be made part of an officer's military records jacket at any time prior to a board convening and then can be given such consideration and accorded such weight as individual board members desire. That procedure maintains the spirit of fairness and objectivity which is so essential to the promotion selection process.

The Committee emphasized the importance of following such established procedures when dealing with the views of senior officials:

> The exceptional weight that can be attributed to a Secretary's (or Chief's) views requires equally exceptional care in the manner those views are conveyed to board members.

Corrective action directed by the Secretary of Defense in response to the 1987 investigation

In a letter to the Committee dated July 7, 1987, Secretary of Defense Weinberger assured the Committee that he had taken vigorous action to prevent recurrence of the problems associated with the Marine Corps major general board:

> As regards the Service Secretaries and other senior officials, we have * * * acted to prevent the problems in this case recurring in the future. After receiving the General Counsel's report of inquiry, I directed prompt issuance of guidance for the military departments to prevent a recurrence of the unfortunate confluence of events which necessitated review of the board proceedings in this case. * * *
>
> This guidance * * * fully and systematically addresses the confusion which complicated these board proceedings, by providing that, in the future:
>
> > Service Secretaries may not add authorizations to a promotion board after it convenes without my approval;
> >
> > Service Secretaries and other persons must communicate their views regarding individual officers to a promotion board, if at all, in writing through means which will assure that their views are neither misrepresented nor misunderstood; and
> >
> > Each board member has a right to relief from board service if he or she believes that any person has acted to limit the board's discretion, and a duty to report that matter to appropriate Service or DOD officials.
>
> These provisions provide clear guidance for the future to prevent any circumstance in which the independence or integrity of a board proceeding could be questioned. * * *

As a result of the Secretary's action, an amendment to DOD Directive 1320.12 was issued on June 3, 1987 to ensure the integrity of the promotion process by regulating the flow of information to a selection board. A key feature of the amended directive was the requirement that: "[a]ll communications intended to express the views of the Service Secretary, the senior uniformed member of the Service concerned, or other superior authority to the members of a selection board shall be put *in writing, furnished to each member, and made a part of the board record.*" (emphasis added).

The Committee's report on the Marine Corps major general board took special note of the Secretary's action:

> [T]he Secretary of Defense [has] directed that guidance, uniformly applicable to all three military departments, be promulgated by the Department of Defense to ensure that in the future all communications between a Service Secretary or senior uniformed officers and a selection board be *in writing, be furnished to all members of the board, and be made a part of the official record. . . . (emphasis added).*
>
> On June 3, 1987, the Deputy Secretary of Defense issued revised guidance to the military departments concerning the offi-

cer selection process, which embodied the directions of the Secretary of Defense and incorporated additional safeguards against attempts to manipulate or interfere with promotion selection board procedures. * * *

The June 3, 1987 amendments to DOD Directive 1320.12 included the following changes to ensure the integrity of the promotion process by regulating the flow of information to a selection board.

—A requirement that the Service Secretary provide "written instructions to promotion selection boards."

—A limitation requiring that "[a]ll communications intended to express the views of the Service Secretary, the senior uniformed member of the Service concerned, or other superior authority to the members of a selection board shall be put in writing, furnished to each member, and made a part of the board record."

—A prohibition against providing favorable information or opinion regarding officers to be considered by the board except by means of a letter filed in the officer's official military records or a written communication provided to each member and made a part of the board record.

—A prohibition against furnishing unfavorable information "except as expressly authorized under regulations prescribed by the Secretary concerned."

The Directive was further amended on November 29, 1989 to include:

—Rules governing modification or withdrawal of instructions to a board.

—A restriction providing that "[c]ommunications regarding particular officers are expressly forbidden, unless unusual circumstances exist that would preclude an officer's performance from being documented in the official record (i.e., sensitive classified mission, etc.)".

—Procedures for receiving unsolicited favorable opinions.

—A requirement for guidelines relating to the needs of the service for particular skills.

These amendments did not relax any of the restrictions imposed in June 1987.

Both the 1987 and 1989 amendments to DOD Directive 1320.12 required the Military Departments to provide the Office of the Secretary of Defense with implementing instructions within 120 days.

II. BACKGROUND TO COMMITTEE'S REVIEW OF AIR FORCE PROMOTION SELECTION PRACTICES

Development of information indicating irregularities in Air Force selection board procedures

In 1990, during the Committee's review of certain Air Force nominations for promotion to brigadier general, the Committee received indications that adverse information concerning certain nominees, which was not part of the nominees' military records, had been provided to one member of the selection board. However, this adverse information had not been communicated in writing to all members of the selection board as required by the amendments to DOD Directive 1320.12 that had been directed by the Secretary

of Defense in response to the 1987 investigation of the Marine Corps major general board.

On June 28, 1990, the Committee asked the Department of Defense to determine the manner in which the information was handled with respect to the 1990 Air Force brigadier general selection board in light of the requirements of DOD Directive 1320.12.

The Secretary of the Air Force responded for the Department of Defense on August 3, 1990. In response to the Committee's questions, the Secretary noted that certain adverse information relating to two nominees was provided to the President of the board but not to the other members of the board.

The Air Force response, and the Committee's review of applicable Air Force regulations, indicated that the Air Force had failed to implement both the 1987 and 1989 amendments to DOD Directive 1320.12. On September 28, 1990, the Committee asked the Secretary of Defense to review pending Air Force nominations to determine whether the nominees were selected in accordance with applicable DOD Directives, and to advise the Committee of the actions taken by the Air Force to implement DOD Directive 1320.12.

While the Committee's request was under consideration by the Department of Defense, the Committee discussed the Air Force promotion system with General Merrill P. McPeak during review of his nomination to be Air Force Chief of Staff. In testimony before the Committee on October 24, 1990, General McPeak provided a candid, forthright assessment of deficiencies in the system. In addition to describing the failure to implement applicable rules restricting provision of information to selection boards, General McPeak noted the following additional deficiencies in Air Force procedures:

(1) A preselection process not authorized by Air Force regulations which reduced the number of candidates that would be considered by a general officer selection board through the elimination of about 90 percent of the eligible officers prior to convening of the centralized selection board.

(2) Improper briefings of the Secretary and the Chief of Staff of the preliminary decisions of selection boards prior to final action by the boards.

On October 25, 1990, the Committee brought these matters to the attention of the Secretary of Defense.

Review of the officer promotion process by the Assistant Secretary of Defense (Force Management and Personnel)

Deputy Secretary of Defense Atwood, by memorandum dated November 7, 1990, directed Christopher Jehn, the Assistant Secretary of Defense (Force Management and Personnel), "to review the officer promotion programs and promotion board procedures in each of the Military Departments." The Atwood memorandum stated that the purpose of the review was to determine whether existing regulations and procedures—

(1) are in compliance with statutory requirements,

(2) foster a climate of fair and equitable consideration of officers eligible for promotion, and

(3) ensure the independence and integrity of promotion boards.

The OSD review covered the 1987–90 time period, and focused on the fiscal year 1990 cycle of promotion boards. The review consisted of an examination of regulations and related documents, formal presentations by the Services, and interviews with randomly selected board members and support personnel. The review of the Air Force process, for example, included interviews of 10 officers. The purpose of the review was to identify systemic problems, and it was not designed to specifically address the validity of each board conducted within that period. Therefore, the deficiencies in Air Force procedures described in Part III of this report should be regarded as examples, and not as a comprehensive listing of all irregularities that may have occurred during that period.

On March 15, 1991, Deputy Secretary Atwood forwarded the results of the OSD review to the Committee. Additional material was provided to the Committee on April 9 by Secretary of the Air Force Donald B. Rice and on April 25 by Assistant Secretary of Defense Jehn. The Committee submitted follow-up questions on May 20, and material was submitted to the Committee on June 19 by Assistant Secretary of Defense Jehn and on July 10 by Air Force Secretary Rice. References in this report to the "OSD Review" pertain to material contained in the March 15 letter from Deputy Secretary Atwood and the letters from Assistant Secretary Jehn dated April 25 and June 19, 1991.

III. ANALYSIS

Irregularities identified as a result of the Committee's inquiries concerning Air Force promotion practices

The information provided by the Department of Defense in response to the Committee's inquiries established that there were serious, significant deficiencies in Air Force promotion practices.

1. Failure to issue required implementing regulations

According to Deputy Secretary Atwood, the OSD review "revealed, in the case of general officer promotions, a failure on the part of the Air Force to ensure strict adherence to required procedures." The OSD review noted that "the lack of a governing Air Force regulation may account for an insufficient awareness of the various provisions of DOD [Directive] 1320.12 which contributed to irregularities, both real and perceived, in general officer promotions."

The failure of the Air Force to implement the regulation was not the result of an administrative oversight with respect to a routine matter. The Air Force actively participated in the development of the 1987 changes to the DOD Directive, and specifically objected to coverage by the regulation of general officer selection boards. The Air Force also proposed striking out the language which included "the senior uniformed member of the service concerned [and] other superior military authorit[ies]" in the requirement that all communications from the leadership be in writing. The Air Force comments were not accepted by the Deputy Secretary of Defense when the 1987 changes were issued. After the amended Directive was issued, the Air Force: (1) failed to issue a regulation governing the conduct of general officer selection boards; (2) failed to incorporate

the changes into the existing regulation governing field grade officer selection boards; and (3) failed to incorporate the limitations on communications into the Letters of Instructions provided to selection boards.

The failure of the Air Force to fully implement the DOD Directive persisted for years—even after the Committee brought the Directive to the attention of the Air Force on June 28, 1990. The Air Force issued a regulation governing general officer selections on February 1, 1991. The Air Force has still not revised its field grade selection board regulation to incorporate the 1987 or 1989 amendments to the DOD Directive.

As the Committee noted in its report on the National Defense Authorization Act for Fiscal Years 1992 and 1993 (S. Rept. 102–113):

> The failure of a Military Department to implement a DOD Directive on a timely basis is inexcusable in any case. When it involves a directive that the Secretary has issued to address problems of abuse in the promotion selection process, the failure is intolerable.

The failure to implement the Directive meant that the Air Force provided no guidance to the officer corps in general, or selection boards in particular, as to the strict prohibitions set forth in the amended DOD Directive.

2. Use of a preselection process to improperly exclude eligible officers from consideration by selection boards

When a selection board is convened, the board must consider each officer in and above the promotion zone for the grade and competitive category under consideration (10 U.S.C. 619(c)). There are a number of very limited exceptions, including authorization for the Service Secretary "by regulation" to "prescribe procedures to limit the officers to be considered * * * for promotion to the grade of brigadier general or rear admiral (lower half) * * * to those officers who are determined to be exceptionally well qualified for promotion * * *."

According to the OSD review, the Air Force employed a preselection process without issuing the statutorily required regulation. The Air Force routinely used such unauthorized preselection boards to exclude eligible officers from consideration without prescribing the required procedures.

The OSD review determined the "[t]hese screening boards normally eliminated from consideration by the statutory board approximately 90 percent of those officers who would otherwise have been eligible for consideration by the statutory board."

The OSD review noted that "[n]o formal means were used to advise eligibles of the brigadier general pre-screening process." The effect was that thousands of officers who reasonably could have believed that their nonselection for promotion resulted from the decision of a statutory selection board had, in fact, been eliminated from consideration through unauthorized procedures before the statutory board ever met.

According to the OSD review, the Air Force used a three-tier preselection process to screen out candidates prior to convening statutory brigadier general selection boards. The first tier consisted of

Initial Screening Boards established primarily at major command levels, which eliminated approximately 90 percent of the eligible officers from further consideration. The second tier involved a Central Screening Board, which eliminated about 50 percent of those recommended by the Initial Screening Boards. The final tier was the statutory selection board, which considered the remaining eligible officers.

The Initial Screening Boards were established at each of the major commands and at Headquarters, Air Force. As a result, eligible officers did not compete against their peers throughout the Air Force, as contemplated by the statutory centralized selection process. Instead, they were screened out through a procedure in which they unknowingly competed only against officers within their own command.

The Initial Screening Board at a major command consisted of general officers appointed by the major command commander. Thus, officers eligible for promotion who reasonably expected that they would be considered by a selection board convened by the Service Secretary, as required by law, were instead eliminated from consideration by screening boards appointed by commanders in the field.

An Initial Selection Board convened at a major command was allowed to forward no more than 15 percent of the eligible officers for centralized screening. The Headquarters Initial Selection Board was allowed to forward no more than 10 percent of the eligible officers for centralized screening.

The effect of the Initial Screening Board process was that at least 85 percent of the colonels assigned to the major commands, and at least 90 percent of the colonels assigned to Headquarters, Air Force, were improperly precluded from competing against their peers elsewhere in the Air Force before a central promotion board.

The balkanization of the Initial Screening Board process into separate boards for each major command, and a separate board for the headquarters organizations, meant that an officer could be eliminated even though the officer was better qualified than an officer in another command who was selected. The potential for unfair treatment was magnified with respect to smaller commands, in which the 15 percent limitation meant that in absolute numbers, fewer officers in the smaller commands, as compared to larger commands, were eligible for selection. Thus, an officer at a smaller command who might rank well within the top 15 percent of Air Force colonels on a Service-wide basis, could be excluded from further consideration because of the limited number of selections available to that officer's command. In addition, officers in headquarters, commands, which were subject to a 10 percent limitation, were at a disadvantage compared to their counterparts in major commands, which could forward 15 percent of their eligibles.

The second tier—the Central Screening Board—considered all eligible officers forwarded by the Initial Screening Boards. The Central Screening Board not only considered the military records of eligible officers, it also had access to a "closed" evaluation form—an evaluation that was not made available to the officer being evaluated. Although the closed form was authorized by regulation, the Central Screening Boards were not so authorized.

The Central Screening Board was composed of general officers from the major commands, the Air Force Secretariat, the Air Staff, and Joint Agencies. The president was appointed by the Secretary of the Air Force, and the members were appointed by the Chief of Staff of the Air Force. The Central Screening Board was permitted to forward up to half of the eligibles it considered to the Final (statutory) Selection Board.

The third tier, the Final (statutory) Selection Board, had access to the officer's military records, the "priority lists" submitted by major commanders and other selected officials, and the closed form evaluations.

According to the OSD review, the statutory selection board "considered all eligibles forwarded by the CSB [Central Selection Board], plus a small number of other eligibles identified by the commanders who did not score through the CSB." The "other eligibles" consisted of officers who were not forwarded by the Central Selection Board but who were identified on "priority lists" submitted by the commanders of major commands and other selected officials after they were notified of the results of the Central Selection Board. The priority list system served as a supplement to the screening process, and enabled those permitted to submit priority lists to ensure that favored candidates were not eliminated from consideration by the screening process. These "priority lists" and discussed in more detail in section 3, below.

Statutory screening boards, which are authorized to narrow the field, have a less stringent selection standard than regular (i.e., final) selection boards. Regular selection boards may recommend only those "best qualified" for promotion. The statutory standard for screening boards—"exceptionally well qualified"—permits the final board to select the "best qualified" from a wider field—those found by a screening board to be "exceptionally well qualified." The Air Force, which did not have a regulation governing its screening boards, did not use the "exceptionally well qualified" standard. This was improper, because officers who might have been forwarded under an "exceptionally well qualified" standard were eliminated under the percentage quotas assigned to the screening boards.

The problems caused by failure to use the statutory criteria were compounded because the screening boards operated with virtually no written guidance, other than the limitations on the percentage that could be forwarded. As a result, the Initial Screening Boards could operate without regulations requiring the safeguards applicable to statutory selection boards, such as: (1) the requirement that no officer may be a member of two successive boards for the consideration of officers of the same competitive category and grade; (2) the requirement that eligible officers be provided with at least 30 days notice of the convening of a board and provided an opportunity to send a written communication to the board; (3) the requirement for Secretarial guidance, including guidance to ensure appropriate consideration of joint duty assignments; (4) the prohibitions against reviewing authorities adding to or deleting from the recommendations of selection boards; and (5) limitations on communications to selection boards. As a result, officers who reasonably believed that their records were considered in accordance with such

safeguards were eliminated by screening boards in which such safeguards were not required to be observed.

In summary, instead of an authorized screening process with centralized selection using a statutory standard, the Air Force used an unauthorized process in which 90 percent or more of the eligible officers were eliminated decentralized boards using an improper standard without regulations requiring the statutory safeguards applicable to regular selection boards.

3. Improper communication of "priority lists" to selection boards

The OSD review found that since the 1960's, the Air Force "allowed certain senior officers and civilian officials to provide to general officer promotion boards a list of eligible officers recommended for promotion. * * * These * * * Priority Lists * * * were the personal choices for promotion of the officials who prepared the lists, and proposed for promotion a small subset of the eligible officers."

The OSD review observed that the "use of these lists was not addressed in regulation and was not common knowledge outside the general officer management community." According to the OSD review, "[e]ligible officers were not made aware of the priority list system."

Officials permitted to submit a priority list were allowed to designate no more than 4 percent of the eligible officers in their command. Priority lists consisted of a rank ordering of certain candidates by the commander. There was no narrative information. Thus, the list did not provide selection boards with any information about the military record of an officer. The information communicated by the list—the presence or absence of a name, and the relative order of names on the list—was significant, however, because the list communicated the views of the major commanders and other senior officials as to who should be selected.

As noted in the OSD review, use of such lists violated the 1989 amendments to DOD Directive 1320.12, which generally prohibited "communications regarding particular officers" (subject to very limited exceptions). A March 6, 1991 Air Force memorandum, included as an enclosure to the OSD review, explained that the Deputy Chief of Staff for Personnel briefed the Secretary of the Air Force on the use of priority lists after the 1987 amendments to DOD Directive 1320.12. He did not brief the Secretary after the 1989 changes, which expressly prohibited communication of information such as priority lists to selection boards.

In addition to violating the 1989 changes to the DOD Directive, the use of priority lists compounded the problems noted in section 2, above, concerning the use of unauthorized screening procedures. The priority lists were prepared by the major commanders and other selected officials after were notified of the results of the Central Screening Board. As a result, an officer who had not been selected by the Central Screening Board could nonetheless be considered by the final, statutory board if fortunate enough to be placed on a commander's priority list. Thus, even if the preselection process had been properly structured under 10 U.S.C. 619(c)(2) "to limit the officers to be considered by a selection board * * * to those officers who are determined to be exceptionally well qualified for pro-

motion," the statutory process would have been undermined by the use of priority lists to circumvent the statutory standard.

In summary, the use of priority lists improperly communicated the views of the senior leadership about particular officers to selection boards. In addition, the priority lists enabled the leadership to circumvent the preselection process. None of this was made known to eligible officers, who could reasonably believe that they were being considered for promotion on the basis of their official military records.

4. Improper communications between the Air Force leadership and selection board members

The OSD review noted that a board president had specific conversations with the Service Secretary and Chief of Staff during the 1989 brigadier general promotion board. According to the OSD review, these communications "did not comport with paragraph G.2. of DODD 1320.12 in that these communications were not in writing, were not provided to each board member, and were not made part of the board record."

The review also noted that, as a general practice, "prior to the signing of the board report by promotion board members, the results of general officer promotion boards were routinely provided to both the Chief of Staff and the Service Secretary." These oral reports not only created the opportunity for improper verbal communications of the views of the Air Force leadership in violation DOD Directive 1320.12, but also were contrary to 10 U.S.C. 617(a), which requires the board to provide the Secretary with a "written report, signed by each member of the board."

In response to a follow-up question by the Committee, the Air Force described by following incident, which illustrates the problems created by improper communications during a board's proceedings. A board was convened to select 32 officers for promotion to major general out of 102 eligibles. The board conducted a trail run, followed by a discussion, and "an initial review and scoring of the candidates." The board then adjourned for the evening.

When the board president reviewed the results, he found that Brigadier General "XYZ" was not among the top 32 in the order of merit, despite the fact that he had scored well in the trial run. According to the Air Force report, "[t]here had been some discussion of this officer's performance among some of the members after the trial run."

That evening, the board president had a "courtesy visit" with the Chief of Staff, during which he asked whether the Chief of Staff was satisfied with the performance of Brigadier General "XYZ" and whether the Chief of Staff agreed with the Vice Chief's decision to place Brigadier General "XYZ" on the "priority list" that the Vice Chief had submitted to the selection board. The Chief of Staff noted his satisfaction with Brigadier General "XYZ's" performance and his agreement with the placement of Brigadier General "XYZ" on the Vice Chief's priority list.

The next day, the board president advised the board of his concern that there was an "anomaly or disconnect" in the scoring. He also advised the board that "the Chief agreed with the Vice Chief's placement of BG XYZ on the priority list and that the Chief was

satisfied with the duty performance of BG XYZ." The board decided to rescore Brigadier General "XYZ's" record, and the result of the rescoring placed him in the top 32 officers selected for promotion. According to the Air Force report, two of the members of the board, who had not been present during the entire discussion of the rescoring process, "believed that the rescoring of BG XYZ was very unusual and that there was actual or implied pressure to select BG XYZ." The Air Force report added that another member of the board "suggested that 'influence' may have caused the board to rescore, but that no one directed the board to select BG XYZ." Other members of the board did not have a clear recollection of the matter. As noted in the Air Force report, "the circumstances under which this rescoring was accomplished must be viewed as a violation of paragraph G2 of DOD Directive 1320.12, because of the communication between the Chief of Staff and the board president."

This incident underscores the inherent unfairness of communications to the board by the senior leadership during the deliberative process. The selection board was limited to recommending 32 officers for promotion. In the scoring that took place before the conversation between the Chief of Staff and the board President, Brigadier General "XYZ" did not score among the top 32 eligibles. After the conversation, he was included—thereby displacing another officer who did not have the benefit of a dicusssion between the board President and the Chief of Staff. The issue is not whether the Chief of Staff "directed" the board to select Brigadier General "XYZ"; rather, it is the failure of the Air Force to conduct its selection board proceedings, as required by law, in a manner that insulated board members from any communication that could be viewed by board members as influencing them toward a particular selection.

This incident illustrates the manner in which the failure of the Air Force to implement the DOD Directive left the Service vulnerable to improper conduct.

The OSD review found that the Deputy Chief of Staff for Personnel, although not serving as a selection board member or on the administrative support staff, was afforded access to promotion board proceedings. According to the OSD review: "This created the opportunity for violation of the rules governing communications insofar as this officer could be perceived as informally expressing the views of the Service Secretary, Chief of Staff, or other superior authority." The OSD review also noted that "such access may be in conflict with [10 U.S.C. 618(f)] which provides that the proceedings of a selection board may not be disclosed to any person not a member of the board." To the extent that the Deputy Chief of Staff for Personnel was involved in communications beyond routine administrative assistance to the board, such activities were in violation of the regulations and the statute.

A March 6, 1991 Air Force memorandum, included as an enclosure to the OSD review, notes that the Deputy Chief of Staff for Personnel "did, on occasion, discuss eligible officers with a board president or member." According to the March 6 memorandum, "on occasion a board member would ask if the Chief or other senior officials felt strongly about a candidate who had been highly rated. If the question was asked, he answered it."

The OSD review provides further details: "The Air Force informs us that prior to the convening of a promotion board, neither the CSAF [Chief of Staff of the Air Force] nor other senior officials conveyed their views about individual officers to [the Deputy Chief of Staff for Personnel]. In the course of working general officer assignments and related personnel matters with the senior staff, [the Deputy Chief of Staff for Personnel] became aware of how the senior staff regarded some officers. *If asked for comment, [the Deputy Chief of Staff for Personnel] provided his assessment of how the officer was viewed by the CSAF or another senior officer.* If he did not know enough to form an opinion, he declined to offer one." (emphasis added).

The March 6 Air Force memorandum observes that on one occasion, the Deputy Chief of Staff for Personnel "spoke to a full board from his own personal knowledge about an officer he believed had an integrity problem. He believed he had a personal responsibility to inform the board that the officer under consideration had lied to him and therefore lacked integrity." The OSD review notes that although the Deputy Chief of Staff for Personnel had advised the officer's supervisor of his concern, he had taken no action before or after the selection board to document this concern in an official record that would be properly before a selection board. The DOD letter also notes that the particular officer was not selected for promotion. The officer was not aware of, nor did he have an opportunity to rebut, this adverse information.

An additional difficulty is presented by the role of the Deputy Chief of Staff for Personnel in the "scoring" process. A statutory selection board determines which officers are selected through the assignment by board members of numerical scores to each eligible officer. Those who score highest, up to the number of eligibles the board is authorized to recommend, are selected. In the Air Force, the Deputy Chief of Staff for Personnel assisted the board in the conduct of "trail scores". The purpose was to promote discussion about the attributes that would make an officer worthy of selection. The "trial" scoring involved use of selected records of eligible officers, not hypothetical candidates. The discussion that followed involved consideration of the merits of an officer's records. The participation of the Deputy Chief of Staff for Personnel in these discussions constituted improper communication of the views of a senior officer about a particular eligible candidate in violation of DOD Directive 1320.12.

According to the March 6, 1991 Air Force memorandum, the Deputy Chief of Staff for Personnel "had full access to all boards, and considered it part of his role as DCS/Personnel to be there." The memorandum notes that earlier in his career, as a board member, he had observed previous Deputy Chiefs of Staff for Personnel "in the [selection] board room" and believed that "this was expected of the DCS/Personnel as part of his job, and indeed, that is would have been noted and questioned by board members if he were not present for a board."

The OSD review did not address the issue of whether it was appropriate for the Deputy Chief of Staff for Personnel to personally provide administrative support to selection boards. Because he was viewed by other members of the board as a representative of the

senior leadership, he should not have been placed in that position. Even if it had been proper for him to provide administrative support to the boards, it was essential that he perform such tasks in a manner consistent with applicable law and regulations. In communicating unfavorable information to the board about a specific officer, he acted contrary to the position of trust which had provided him with access to the board's deliberations.

5. Improper communications by board members during board proceedings

The March 6, 1991 Air Force memorandum, summarizing information provided by the Deputy Chief of Staff for Personnel, noted that "[b]oard presidents from time to time have contacted officials outside the board structure concerning an eligible officer." In one case, "a board president called a CINC to clarify the ranking of an eligible officer on the CINC's PL [priority list]." In another instance, "contact was made with a commander to ascertain the meaning of remarks on a closed form" (i.e., the evaluation form that was not provided to the eligible officer).

The OSD review notes:

> [T]he Air Force conducted general officer boards in a manner that afforded the board members—who were all general officers—a significant degree of autonomy. Although the board recorders and support personnel limited access to the boardroom area and attempted to monitor the use of the telephones in the board room area, the board members had the opportunity to initiate and receive communications about any subject including eligible officers.

In the absence of a regulation limiting communications, there was no express limitation on the manner in which board members, exercising their "autonomy," could communicate with outside officials during board deliberations. This created the opportunity for violations of the prohibitions against such communications.

6. Improper increase in the number of officers authorized to be selected for promotion

DOD Directive 1320.12 provides that after a board is convened, the Service Secretary may not increase the number of officers authorized to be selected without the written approval of the Secretary of Defense. The purpose of this provision is to prevent a recurrence of the action taken with respect to the 1987 Marine Corps major general board, when the number of authorized selections was increased, after the board had made its initial decisions, to facilitate the selection of a candidate who was not initially selected by the board.

The OSD review determined that in 1988, after a board convened, the Secretary of the Air Force authorized an increase in the number of selections without the approval of the Secretary of Defense. According to the March 6, 1991 Air Force memorandum, this occurred when the Secretary and Chief of Staff were briefed on the results of a board, before the board adjourned, by the President of the board and the Deputy Chief of Staff for Personnel. The briefing took place before the board itself was informed of the order of merit that resulted from the scores they gave the candidates.

During the briefing, the leadership was informed that a particular officer was placed below the cutoff point during rescoring procedures used to break a tie for the last remaining position to be selected. The "cutoff point" is the position on the order of merit list that separates those officers selected for promotion (above the cutoff point) from those officers who are not selected (below the cutoff point).

After hearing the briefing, the Chief of Staff suggested, and the Secretary agreed, to increase the number of eligible selections in order to include the officer who otherwise would not have been selected. According to the Air Force memorandum, the Deputy Chief of Staff for Personnel was not aware that such an action was impermissible without approval by the Secretary of Defense, and no one on his staff raised an objection. Although this was in clear violation of the changes in DOD Directive 1320.12 issued in 1987 to prevent manipulation of selection board results by the leadership, the change was approved by the Air Force leadership and the officer was selected and promoted.

7. Manipulation of the scoring process

The Air Force general officer promotion process used a scoring system to rank in order the candidates under consideration. When there was not a clear break point at the selection cut off line (i.e., between those who would be selected and those who would not be selected), the Air Force used a procedure involving repetitive rescoring of those in the group just above and below the cut off line. The OSD review documented the manner in which this process could be manipulated to favor a particular officer. As noted above in the context of improper discussions between the leadership and board members, there was one incident in which a particular officer was scored below the group eligible for additional scoring. In that instance, the board President "expanded" the size of the group eligible for additional scoring, which resulted in an additional opportunity for that officer to be considered. That officer, who would not have been selected had the normal scoring process been followed, received a score upon rescoring that improved his position relative to other eligible officers, resulting in his selection.

The improvement in that officer's relative position upon rescoring necessarily resulted in a lowering of another officer's relative position. Since the board was given a fixed number of selections, manipulation of the scoring process not only resulted in the selection of an officer who would not have been selected under normal procedures, it also resulted in the nonselection of an officer who would have been selected had regular procedures been followed.

Such manipulated rescoring undermines the integrity of the promotion process because it provides discretion for the board's results to be altered to the advantage of a particular officer not initially selected and to the disadvantage of an officer initially selected. The Air Force has subsequently eliminated any rescoring that is not needed to break a tie at the cutoff point.

8. Selection of field grade officers

The OSD review did not find similar systemic problems with respect to selection for grades O–6 and below:

> The review determined that the existence of governing regulations, the training and use of full-time recorders, and control of access to board areas made the field grade process less vulnerable to "ad hoc" action and inappropriate influences than was the case in general officer promotion boards.

The Committee notes that none of the information provided by OSD or the Air Force documents any incidents of inappropriate communications to a field grade selection board. The Committee also notes, however, that the OSD review was designed to identify systemic problems and involved the interview of only a handful of board members and support personnel. As a result, it did not serve as a comprehensive review of selection boards that have met since the 1987 amendments were issued to DOD Directive 1320.12. The continuing failure of the Air Force to implement the prohibitions on communications in its field grade regulation means that the Air Force continues to be unnecessarily vulnerable to violations in individual cases.

9. Failure of the Air Force to undertake timely review and corrective action

In response to the Committee's questions in the summer of 1990 about a specific selection board, the Air Force noted on August 3, 1990 that adverse information concerning two officers was provided to the President of the board but not to the other members of the board. The response, however, did not reflect that this procedure was in violation of the requirement in DOD Directive 1320.12 to provide such information to all board members. Instead, the response implied that the Secretary acted under statutory authority:

> Under Section 615(a) of Title 10 [of] the United States Code[,] the Secretaries of the Military Departments are responsible for determining the information to be provided to promotion selection boards and for establishing the procedures by which the boards are provided the information. This would include policies concerning information on providing potentially adverse information to selection boards about individuals considered for promotion.

This response fails to take into account the Air Force's own 1987 review of DOD Directive 1320.12, which concluded that the amended Directive established mandatory procedural requirements for the conduct of selection boards.

In response to the Committee's specific question as to the regulatory basis for providing a document to the board President that was not made available to each member of the board, the Air Force letter asserted that the Secretary had statutory authority for his action:

> In performing his statutory responsibilities under Section 615(a) of Title 10 the Secretary decided to show the material to the President of the Board and allow the President an input as to whether the information should or should not be provided to the members of the board.

This response fails to note that while the Secretary has general statutory authority to provide information to selection boards, he has no authority to disregard limitations established by his superior, the Secretary of Defense. Moreover, it is inconsistent with the

Air Force's own 1987 review of the DOD Directive, which noted that it would be improper for the board President to screen adverse information for purposes of deciding what information should be provided to the board.

On February 7, 1990, the Air Force provided a report to the Secretary of Defense on matters related to the Air Force's selection board problems. The Air Force acknowledged that the Service had used a variety of unauthorized practices, such as nonregulatory preselection boards, briefings for the senior leadership before boards adjourned, improper access to the selection board by the Deputy Chief of Staff for Personnel while the board was in session, and submission to boards of priority lists from certain commanders. The Air Force acknowledged that these practices were inconsistent with the Defense Officer Personnel Management Act and the 1987 and 1989 amendments to DOD Directive 1320.12, but attempted to deflect criticism from the Air Force by stating:

> The Air Force, *like the other Services*, gave insufficient recognition to these changes and did not issue the implementing regulations required by DOD Directive 1320.12; until recently DOD took no steps to ensure that such regulations were issued. (emphasis added).

Subsequently, the Committee asked the Department of Defense whether the systemic deficiencies in the Air Force selection board system were present in the systems managed by any other Military Departments. DOD advised the Committee on June 19, 1991 that the OSD review had not encountered the problems exhibited by the Air Force in any of the other Services, and that the review "did not find systemic deficiencies in the implementation of DODD 1320.12 by other Services."

An additional problem with the Air Force response is the implication that the Air Force problems were somehow excused because "DOD took no steps to ensure that such regulations were issued." The Department of Defense necessarily and properly operates on the premise that orders will be obeyed. While OSD always retains ultimate responsibility for the performance of the mission, and should institute appropriate oversight procedures to monitor the performance of subordinate organizations, it is inappropriate for a Military Department to imply that OSD is responsible for the Military Department's failings when the Military Department has been given clear instructions to implement an important administrative matter.

In material provided to the Secretary of Defense on March 6, 1991, the Air Force provided the following description of the Air Force's reaction to the changes proposed in the 1987 amendments to DOD Directive 1320.12:

> [The Deputy Chief of Staff for Personnel] recalls that when DOD Directive 1320.12 was changed in 1987, he believed it was intended to correct problems that the Navy had experienced with its promotion boards, and he did not believe that any of those problems existed with Air Force boards. He did not believe that any Air Force Secretary or Chief of Staff had ever interfered with the selection process or that they ever would. He and his staff disagreed with the general officer provisions of DODD 1320.12 circulated in May 1987 on the basis that

there was no need for them. In the Air Force's view, the system had worked effectively and fairly for over twenty years.

This explanation, however, is incomplete. As noted in Part II of this report, the Air Force actively participated in the development of DOD Directive 1320.12, opposed inclusion of general officers, reviewed the Directive in detail after it was issued, and nonetheless failed to issue appropriate implementing regulations.

After the OSD review documented the numerous deficiencies in Air Force practice, the Air Force provided additional views to the Committee. In a letter dated April 9, 1991, the Air Force acknowledged the failure to issue implementing regulations, but provided the following explanation:

> The Air Force did not issue the required implementing regulations, relying in part on the erroneous assumption that an expanded 1987 Secretarial Memorandum of Instruction to the Board would be sufficient. The sensitive 'close-hold' aura that had traditionally surrounded general officer matters seems to have allowed the incorrect view to develop that regulations spelling out procedures were unnecessary.

The implication is that the Air Force was in technical noncompliance by not issuing a regulation, but that there was coverage in the "expanded" Secretarial Memorandum of Instruction. This response was incomplete. The Secretarial Memorandum of Instruction referred to the provisions of the DOD Directive concerning the duties of the board President, the general requirement for board members to act without prejudice, and the responsibility to report misconduct; but it made no reference whatsoever to the central provisions of the 1987 amendments—the restrictions on communications to the board concerning particular officers.

As noted above, the Air Force—for more than three years—failed to implement the 1987 amendments to the DOD Directive designed to address the potential for abuses in the promotion selection process. It has still not issued an implementing instruction for field grade promotions. These failures were harmful to the Air Force in general and to the officers eligible for promotion in particular. Thousands of officers were improperly excluded from consideration by statutory selection boards through use of an unauthorized selection process. Other officers were unfairly disadvantaged because they were not included on unauthorized "priority lists" used to communicate the preferences of selected leaders to promotion boards. The process was particularly unfair to those officers who—unbeknownst to them—were the object of particular communications or victims of manipulation of the scoring process.

In a large organization, such as the Air Force, there will be occasional failures to properly implement laws and regulations. The test of an organization's effectiveness is its willingness to promptly recognize such failures, take corrective action, and ensure that there is a thorough assessment of accountability and responsibility for the failures. In this case, the Air Force compounded the deficiencies in the promotion process by the failure to take timely action when the problems were brought to the attention of the civilian leadership.

IV. SUMMARY OF FINDINGS

The DOD review identified systemic deficiencies in the Air Force selection process. These deficiencies included the following:

(1) Failure to issue implementing regulations required by applicable statutes and Department of Defense Directives to ensure the fair operation of the selection board process.

(2) Use of a preselection process that improperly excluded 90 percent or more of the eligible officers from consideration by statutory selection boards.

(3) Improper communication to selection boards of "priority lists" prepared by senior officers.

(4) Improper communications between the Air Force leadership and selection board members.

In addition, the DOD review identified specific instances in which the following deficiencies occurred:

(1) Improper communications by board members with outside personnel during board proceedings.

(2) Improper increase in the number of officers authorized to be selected for promotion.

(3) Manipulation of the scoring process used by selection boards to determine which officers would be recommended for promotion.

V. OBSERVATIONS

The integrity of the selection board process

The integrity and fairness of the selection board process traditionally have been major concerns of the Committee on Armed Services. The Committee has acted through legislation, review of nominations, and oversight to ensure that the procedures used for selection boards are fair to the officer corps and are designed and conducted to select the best qualified officers for promotion.

The relationship between the integrity of the selection process and the integrity of the officer corps was underscored during recent Committee hearings. General Gordon R. Sullivan, Chief of Staff of the Army, noted that:

> There is a direct link between the integrity of the selection board process and the integrity of our officer corps. The link lies in the confidence our officer corps has in the objectivity and professional ethic of the board. Our selections must be fair, impartial, and based upon demonstrated potential instead of subjective criteria, and they must be seen as such by our officer corps.

General Carl E. Mundy, Jr., Commandant of the Marine Corps, similarly observed that:

> Integrity is the basis for the special trust and confidence reposed in the officer corps. * * * Any breach of integrity in the selection process jeopardizes this special trust and confidence.

The Air Force process for selection of general officers

The Air Force used a promotion selection system that did not properly implement the statutory and regulatory standards and procedures established to ensure the integrity of the promotion selection process.

The starting point was an unauthorized preselection process in which 90 percent or more of the eligible officers were improperly excluded from consideration by the statutory selection boards. The preselection process employed an improper standard, precluded officers from competing against their counterparts on a Service-wide basis, failed to provide regulatory guidance incorporating the safeguards applicable to statutory boards, provided major commanders and other senior officials with the means to circumvent the process through use of priority lists, and operated without the knowledge of the officers under consideration.

The 10 percent who were considered by statutory boards were considered under procedures involving unauthorized use of "priority lists" to improperly communicate the choices of selected leaders to the statutory boards. The procedures were further tainted by incidents involving improper communications to the boards by the Air Force leadership, unauthorized increase in the number of officers selected for promotion, and manipulation of the scoring process.

The process provided the commanders of major commands and other selected officers with multiple opportunities to directly communicate their preferences about specific individuals to selection boards. Rather than relying on the official records and evaluations of eligible officers, the Air Force used a system in which a commander of a major command could convene an Initial Screening Board at the command level, circumvent the screening board process through submission of a priority list, and signal specific preferences to the statutory board by the relative placement of officers on a priority list. Within the board, preferences could be further communicated through discussion with the Deputy Chief of Staff for Personnel about the views of the senior leadership, direct communications from board members to persons outside the board, and personal discussions between the board President and the Air Force leadership. The system was further subject to compromise through the addition of names after the board had made its initial selection and through the use of "rescoring" to include officers who otherwise would not have been selected and to exclude officers who had been selected.

These problems were compounded by the failure of the Air Force to make these procedures known to eligible officers. Thus, officers who reasonably believed they were reviewed under a statutory process were, instead, reviewed by a separate process known only to insiders.

Legislative action

In response to the problems identified as a result of the Committee's inquiries and the OSD review, the Committee initiated legislation to better ensure the integrity of the promotion selection process, which is set forth in section 504 of the National Defense Authorization Act for Fiscal Years 1992 and 1993. The legislation: (1) requires the Secretary of Defense to prescribe uniform regulations governing information furnished to selection boards; (2) provides that any communication to a selection board, including any member of the board, must be in writing, furnished to all board members, and made a part of the selection board's record; (3) en-

sures that the information provides to boards about an officer consists only of material from the officer's official military personnel file, information provided to the board by the officer concerned, or other substantiated, relevant information, identified and forwarded under uniforms procedures established by the Secretary of Defense that could reasonably and materially affect the deliberations of the selection board; (4) ensures that eligible officers receive notice of and an opportunity to respond to the information about them that will be considered by the board; (5) restricts disclosure of the board's results to anyone outside the board until the members have completed and signed their final report; (6) prohibits improper influence on the board; (7) precludes use of a preselection process except under carefully limited procedures; and (8) provides eligible officers with notice of and an opportunity to respond to any information that is transmitted by a Service Secretary as part of a recommendation that an officer be removed from a selection board list.

Administrative action

As a result of the review initiated by the committee, the Air Force has issued a regulation governing general officer selection boards. The Air Force no longer uses a preselection process for promotion to brigadier general, and has eliminated the use of priority lists. It has also eliminated the "closed form" evaluation process, thereby ensuring that eligible officers have an opportunity to review and comment on information about them that will be provided to selection boards. Although more than four years have passed since Secretary Weinberger promised that regulations would be issued to implement the corrective actions he directed in the wake of the Marine Corps major general board investigation, the Air Force still has not amended its field grade regulation to implement DOD Directive 1320.12.

Additional changes will be required as a result of the reforms mandated by section 504 of the National Defense Authorization Act for Fiscal Years 1992 and 1993. In view of the failure of the Air Force to implement the changes directed by Secretary Weinberger in 1987, the staff recommends that the Committee request the Assistant Secretary of Defense (Force Management and Personnel) to carefully monitor implementation of this legislation. The staff also recommends that the Committee conduct appropriate oversight hearings to review the manner in which the legislation has been implemented.

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